

## **REMARKS**

**[0003]** Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-39, and 44-54 are presently pending. Claims amended herein are 1-11, 13-25, 28-39, 45, and 48-53. Claims withdrawn or cancelled herein are none. New claims added herein are none.

### **Expectation that the Next Action will not be Final**

**[0004]** Applicant submits that all pending claims are in condition for allowance. If the Examiner feels otherwise and believes that another action on the merits is necessary, then Applicant expects such an action would be Non-Final.

**[0005]** According to 37 CFR § 1.113 and MPEP 706.07, the "examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal." "The invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied."

**[0006]** In accordance with 37 CFR § 1.113 and MPEP 706.07(a), Applicant respectfully submits that finality would be premature for the next action for the following reasons:

- This Office Action failed to provide specific claim rejections and reasoning for those rejections;

- This Office Action failed to address specific claimed aspects that the Applicant has previously indicated as differing from the cited art.

Rejecting claims without specific support or reasoning

**[0007]** While the Office Action provides blanket rejections that include all pending claims, the Office Action fails to address any claim with adequate specificity. In other words, the Office Action does not cite any references (alone or in combination) that disclose all of the elements of the claims and in their particular claimed arrangement. Furthermore, the Office Action fails to provide any reasoning why one of ordinary skill in the art would interpret the references to be relevant to the features of the claims.

Failure to address aspects of claims previously identified as distinguishing

**[0008]** Applicant submits that the Examiner has not yet addressed specific claim language that the Applicant submits distinguishes the claims from the cited references (including those newly cited references). It is not that the Examiner disagreed about whether specific claim language distinguishes the claims from the cited references. Rather, it appears that the Examiner has not addressed whether specific claim language distinguishes the claims from the cited references.

**[0009]** Examples of such specific claim language referenced by the Applicant, but never addressed by the Examiner, may be found at the following locations in Applicant's prior response that is dated 5/28/2008:

- Para.[0024 -0026]
- Para.[0028 -0030]
- Para.[0032 -0034]
- Para.[0037 -0040]
- Para.[51].

**[0010]** This list is not intended to be exhaustive. Rather, it is intended to illustrate examples of distinguishing claim language discussed in the Applicant's prior response, but not addressed by the Examiner in this Action and in the prior Action.

#### Applicant's Right to Adequately Respond

**[0011]** With few exceptions, the Examiner provides little to no explanation as to how the components of the cited reference correspond to the actual claim language. Furthermore, the Office provides little or no explanation as to how the operation of components of the cited reference corresponds to that of the actual claim language.

**[0012]** Since the Examiner has provided little or no reasoning for its rejections, Applicant can do little more than gainsay. Applicant is forced to make assumptions and guesses as to the Examiner's specific reasoning. Therefore, Applicant submits that it has been denied its right to adequately and effectively respond to the Office's rejections.

**[0013]** In *In re Lee*, 61 USPQ2d 1430 (CA FC 2002), the Federal Circuit explained the following on page 1433:

The Administrative Procedure Act, which governs the proceedings of administrative agencies [such as the Patent and Trademark Office] and related judicial review, establishes a scheme of "reasoned decisionmaking." Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational. Allentown Mack Sales and Service, Inc. v. National Labor Relations Bd., 522 U.S. 359, 374 (1998) (citation omitted).

This standard requires that the agency not only have reached a sound decision, but have *articulated the reasons for that decision*. The reviewing court is thus enabled to perform meaningful review within the strictures of the APA, for the court will have a basis on which to determine "whether the decision was based on the relevant factors and whether there has been a clear error of judgment." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971). [emphasis added]

**[0014]** Applicant submits that the Office has not articulated the reasons for its decision-making here. Furthermore, according to the reasons and facts given above and to 37 CFR § 1.113 and MPEP 706.07, Applicant respectfully submits that no clear issue has been developed between the Applicant and the Examiner for each pending claim so that such issues would be ready for appeal if the next action is made final. Accordingly, Applicant respectfully requests that the next action—if not a Notice of Allowance—be Non-Final.

### **Statement of Substance of Interview**

**[0015]** The Examiner graciously talked with me—the undersigned representative for the Applicant—on 3 November 2008.

**[0016]** During the interview, I presented how the claims differed from the cited reference, namely Pawlak. The Examiner was not receptive to discussing the differences. However, the Examiner indicated that he would review the cited art more carefully if arguments were to be presented in writing.

**[0017]** Applicant herein presents argument in support of the allowability of the claims in light of the currently cited references. Accordingly, Applicant submits that the pending claims are allowable over the cited art of record for at least the reasons discussed herein.

### **Formal Request for an Interview**

**[0018]** If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can talk about this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

**[0019]** Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call as well. My contact information may be found on the last page of this response.

### **Claim Amendments**

**[0020]** Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 1-11, 13-25, 28-39, 45, and 48-53 herein. Applicant amends claims to clarify claimed features. Such amendments are made to expedite prosecution and more quickly identify allowable subject matter. Such amendments are merely intended to clarify the claimed features, and should not be construed as further limiting the claimed invention in response to the cited references.

## **Substantive Matters**

### **Claim Rejections under § 102 and § 103**

[0021] The Examiner rejects claims 49-53 under § 102. For the reasons set forth below, the Examiner has not shown that the cited references anticipate the rejected claims.

[0022] In addition, the Examiner rejects claims 1-12, 13-16, 17-33, 34-39, 44-48, and 54 under § 103. For the reasons set forth below, the Examiner has not made a prima facie case showing that the rejected claims are obvious.

[0023] Accordingly, Applicant respectfully requests that the § 102 and § 103 rejections be withdrawn and the case be passed along to issuance.

[0024] The Examiner's rejections are based upon the following references alone and in combination:

- **Pawlak:** *Pawlak*, "Software Update Service to Ease Patch Distribution" (April 22, 2002)  
(<http://www.directionsonmicrosoft.com/sample/DOMIS/update/2002/05may/0502sustep.htm>); and
- **IBM:** *IBM*, "RS/6000 ATM Cookbook", Redbook.ibm.com, 2000.

### **Overview of the Application**

[0025] The Application describes a technology for assigning a level of service governing aspects of application of software updates to client computers,

the scheduling of the application of the update and initiating installation of the update in accordance to the level of service and schedule.

### **Cited References**

[0026] The Examiner cites Pawlak as the primary reference in the anticipation- and obviousness-based rejections. The Examiner cites IBM as a secondary reference in the obviousness-based rejections.

#### **Pawlak**

[0027] Pawlak describes a technology for applying software updates using Microsoft Software Update Service (SUS), which is a precursor to the subject of the instant application.

#### **IBM**

IBM describes a technology for communication over a network using an IBM RS/6000



## **Anticipation Rejections**

[0028] Applicant submits that the anticipation rejections are not valid because, for each rejected claim, no single reference discloses each and every element of that rejected claim.<sup>1</sup> Furthermore, the elements disclosed in the single reference are not arranged in the manner recited by each rejected claim.<sup>2</sup>

### **Based upon Pawlak**

[0029] The Examiner rejects claims 49-53 under 35 U.S.C. § 102(a) as being anticipated by Pawlak. Applicant respectfully traverses the rejection of these claims. Based on the reasons given below, Applicant asks the Examiner to withdraw the rejection of these claims.

### **Independent Claim 49**

[0030] Applicant submits that Pawlak does not anticipate this claim because it does not disclose the following elements as recited in this claim :

- using a previously updated client computer as a reference to generate a template of approved updates; and
- deploying the template to a plurality of client computers.

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<sup>1</sup> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); also see MPEP §2131.

<sup>2</sup> See *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

**[0031]** The Examiner indicates (Action, p. 4) the following with regard to this claim:

*As per claim 49: Pawlak further disclose, A method implemented by a server computer for performing software updates, the method comprising:*

*using a reference client computer to generate a template of approved updates (See page: Software Update Service Flowchart , and see page: The SUS Web Interface);*

*deploying the template to a plurality of client computers (See page: Software Update Service Flowchart , and see page: The SUS Web Interface); and*

*initiating software updates to the plurality of client computers according to the template (See page: Software Update Service Flowchart: "Start").*

**[0032]** The locations cited by the Examiner in support of the rejection do not discuss the elements of the claims. The Applicant is unable to infer any indirect or broad interpretation that could be construed as support for the rejection. Furthermore the Applicant is unable to find any discussion of the above mentioned claim features at any other location within Pawlak or any other cited reference. Specifically, Pawlak makes no mention of a "template of approved updates" as recited in the claims. In the absence of any further explanation of how the cited location relates to features of the claims the applicant is not able to formulate a formal argument and is only able to gainsay in response.

**[0033]** Consequently, the Applicant submits that Pawlak does not disclose all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

*Independent Claim 50*

**[0034]** Applicant submits that Pawlak does not anticipate this claim because it does not disclose the following elements as recited in this claim:

- using a previously updated client computer as a reference client computer to generate a template of approved updates; and
- deploying the template of approved updates to a plurality of client computers.

**[0035]** The Examiner indicates (Action, p. 4) the following with regard to this claim:

*As per claim 50: Pawlak further disclose, A processor-readable medium encoded with executable instructions that, when executed, direct a server computer to perform a method for updating client computer performing software updates, the method comprising:*

*using a reference client computer to generate a template of approved updates (See page: Software Update Service Flowchart , and see page: The SUS Web Interface);*

*deploying the template to a plurality of client computers (See page: Software Update Service Flowchart, and refer to the internet webpage of SUS Web Interface); and*

**[0036]** The locations cited by the Examiner in support of his rejection do not discuss the elements of the claims, nor is the Applicant able to infer any indirect or broad interpretation that could be construed as support the rejection.

Furthermore, the Applicant is unable to find any discussion of the above mentioned claim features at any other location within Pawlak or any other cited reference. Specifically, Pawlak makes no mention of a "template of approved updates" as recited in the claims. In the absence of any further explanation of how the cited location relates to features of the claims, Applicant is not able to formulate a formal argument and is only able to gainsay in response.

**[0037]** Consequently, the Applicant submits that Pawlak does not disclose all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

*Dependent Claims 51-53*

**[0038]** These claims ultimately depend upon independent claim 50. As discussed above, claim 50 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

## **Obviousness Rejections**

### **Lack of *Prima Facie* Case of Obviousness (MPEP § 2142)**

[0039] Applicant disagrees with the Examiner's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a prima facie case have not been met.

### **Based upon Pawlak**

[0040] The Examiner rejects claims 1-12, 17-33 and 44-48 under 35 U.S.C. § 103(a) as being unpatentable over Pawlak. Applicant respectfully traverses the rejection of these claims and asks the Examiner to withdraw the rejection of these claims.

### **Independent Claim 1**

[0041] Applicant submits that the combination of Pawlak and the Examiner's personal reasoning does not teach or suggest at least the following features as recited in this claim:

- assigning, by the server computer, a level of service to each client computer of a plurality of client computers the server computer is assigned to manage, the level of service for a particular client computer comprising parameters regulating the application of updates to the particular client computer;

- scheduling, by the server computer, performance of one or more software updates to the particular client computer according to the level of service assigned to the particular client computer;
- initiating, by the server computer, execution of the software updates to the particular client computer, according to the scheduling.

**[0042]** The Examiner indicates (Action, p. 6) the following with regard to this claim:

*Assigning, by a server computer, (See sec. "How SUS Works: refer to "SUS Server") a level of service to each of a plurality of client computers (See Sec A.5);*

*scheduling, by the server computer, (See "Software Update Service Flowchart": SUS server starts running scheduled synch., in the Server-side) performance of software updates to a particular client computer from among the plurality of client computers (i.e. SUS AU client.*

*Furthermore, see "Software Update Service Flowchart", from the Server-Side, a new package for update to assigned to a client) according to the level of service assigned to the particular client computer; and*

*initiating (in "Software Update Service Flowchart", i.e. "START" begun from the Server-Side processes), by the server computer, execution of the software updates according to the schedule (See A.1 and A.2-3).*

**[0043]** The locations cited by the Examiner in support of his rejection do not discuss the elements of the claim, nor is the Applicant able to infer any indirect or broad interpretation that could be construed as support the rejection. Furthermore the Applicant is unable to find any discussion of the above mentioned claim features at any other location within Pawlak or any other cited

reference. In the absence of any further explanation of how the cited location relates to features of the claims the applicant is not able to formulate a formal argument and is only able to gainsay in response.

**[0044]** Consequently, Pawlak does not disclose all of the elements and features of this claim.

**[0045]** Furthermore, the Examiner rightly concedes on page 6 of the action:

*Pawlak does not address each of the SUS AU clients is having a level of service.*

**[0046]** The Examiner provides the following reasoning to provide for the lack of a "level of service" being discussed by Pawlack. The Examiner States that Pawlack clearly

*suggests the sizes and scales of service organizations or applying different group policies*

**[0047]** Applicant submits that the Examiner has mis-interpreted Pawlak. Pawlak discusses methods for increasing the scale of an SUS implementation to be able to handle a large organization. This scaling would require implementation of multiple SUS servers, each server providing the SUS service to a subset of the total number of client machines. Under Pawlak, in order for each client computer to know which SUS server with which to connect in order to pull down updates, a Microsoft Active Directory Group Policy Object may be utilized in order to configure the setting of the SUS client application on each client to include the server name of the proper SUS server.

**[0048]** The Examiner suggests that the replication of the server portion of the system, and automated configuration of clients is equivalent to the following as recited in claim 1:

assigning, by the server computer, a level of service to each client computer of a plurality of client computers the server computer is assigned to manage, the level of service for a particular client computer comprising parameters regulating the application of updates to the particular client computer;

**[0049]** Applicant submits that a Microsoft Group Policy Object is not equivalent to "a service level", and neither the SUS client nor the Group Policy Object contain any "parameters regulating the application of updates to the particular client computer".

**[0050]** Therefore, Applicant respectfully disagrees with the Examiner's assertion that Pawlak addresses a level of service, as recited in the claim. Specifically, Pawlak does not teach or suggest a level of service assigned by a server computer to a client computer.

**[0051]** On page 7 of the Action the Examiner makes the following statement:



sec. "Scaling SUS for Larger Organizations"). For the deficiency in mentioning service level in the reference, the difference is only in ingredients for receiving the software in the different period. It does not cause any different effect in the any particular client but updating. The update performance, even in one level or another level remains the same to the software update to SUS UA clients. It should be noted that in the MPEP, the integration or the separation of ingredients does not cause patentable difference.

Therefore, it would be obvious to an ordinary in the art at the time of filing to perform software update on the SUS AU with different types for business requirement, where the cause for doing the service on a level of service would not present patentable difference based on adding/integrating/separating ingredients.

**[0052]** The Examiner asserts that the net effect of the inventions is the same: an installed update. The claim is directed to a server computer assigning, scheduling, and initiating an update on a client computer per a level of service. Pawlak is directed to a client initiated updating of itself. The fact that in both cases a client computer may be updated is not relevant to the patentability of the claim.

**[0053]** As shown above, the combination of Pawlak and the reasoning of the Examiner does not teach or suggest all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 2-28

[0054] These claims ultimately depend upon independent claim 1. As discussed above, claim 1 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claims 29 and 30

[0055] On page 14 of the Action the Examiner refers to his rejection of claim 1 as the basis for rejection these claims. As shown above claim 1 is allowable. Therefore these claims are also allowable for at least the same reasons given for claim 1.

Dependent Claims 31-33

[0056] These claims ultimately depend upon independent claim 29 or 30. As discussed above, claims 29 and 30 are allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

**Based upon Pawlak in view of IBM**

[0057] The Examiner rejects claims 13-16, 34-39, and 54 under 35 U.S.C. § 103(a) as being unpatentable over Pawlak in view of IBM. Applicant respectfully

traverses the rejection of these claims and asks the Examiner to withdraw the rejection of these claims.

*Independent Claim 34*

**[0058]** Applicant submits that the combination of Pawlak and IBM does not teach or suggest at least the following elements as recited in this claim:

- A method executed by a server computer for performing software updates on a plurality of client computers associated with the server computer;
- associating individual ones of the plurality of client computers into groups;
- establishing a change time-window for each of the groups; and
- initiating, by the server computer, software updates to each client computer of a particular group, wherein the initiating is performed within the change time-window established for the particular group.

**[0059]** Pawlak discusses a server computer that provides the resources for clients to manage their updates. Neither Pawlak nor IBM teaches or suggests the server “performing software updates”.

**[0060]** Pawlak discusses scaling a system to include multiple servers that each services a group of clients. In contrast the claim recites creating groups of clients from the plurality of clients assigned to a single server. Grouping clients assigned to a server is not equivalent to two servers each with it’s own group. Therefore Pawlak does not teach or suggest “associating individual ones of the

plurality of client computers into groups". IBM does not add to the teaching of Pawlak regarding this feature.

**[0061]** Pawlak discusses a timestamp indicating the date that an update was released from the software provider. The Examiner equates this date with "establishing a change time-window for each of the groups". Applicant respectfully disagrees. An instance of a date is not equivalent to the claimed "grace period". Furthermore, IBM does not add to the teaching of Pawlak regarding this feature.

**[0062]** Pawlak discusses a server computer providing software update files and means for approving specific updates. Pawlak does not discuss the server initiating software updates. To the contrary, Pawlak discusses that it is the client that initiates the procedure, contacts the server, requests a list of updates and initiates the installation thereof. A process initiated by the client is not equivalent to the claimed, "initiating, by the server computer". Therefore Pawlak does not teach or suggest the recited feature of "initiating, by the server computer, software updates...." Furthermore, IBM does not add to the teaching of Pawlak regarding this feature.

**[0063]** As shown above, the combination of Pawlak and IBM does not teach or suggest all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Independent Claim 35

**[0064]** On page 20 of the Action the Examiner refers to his rejection of claim 34 as the basis for rejection this claim. As shown above claim 34 is allowable. Therefore this claim is also allowable for at least the same reasons given for claim 34.

Dependent Claims 36-38

**[0065]** These claims ultimately depend upon independent claim 35. As discussed above, claim 35 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 39

**[0066]** On page 20 of the Action the Examiner rejects claim 39 under USC 103(a) but does not recite a case for obviousness.

**[0067]** Furthermore, the Examiner cites two pages of the reference Pawlak in support of the rejection. The locations cited by the Examiner in support of his rejection do not discuss any of the elements of the claim. Nor is the Applicant able to infer any indirect or broad interpretation that could be construed as support for the rejection. Furthermore the Applicant is unable to find any discussion of the claim features at any other location within Pawlak or any other cited reference. In the absence of any further explanation of how the cited

location relates to features of the claims, Applicant is not able to formulate a formal argument and is only able to gainsay in response.

[0068] Consequently, as the Examiner has failed to provide a prima facie case for obviousness and Pawlak does not disclose all of the elements and features of this claim, Applicant asks the Examiner to withdraw the rejection of this claim.

Independent Claims 44 and 45

[0069] On pages 14 and 16 of the Action the Examiner refers to his rejection of claim 1 as the basis for rejection these claims. As shown above, claim 1 is allowable. Therefore these claims are also allowable for at least the same reasons given for claim 1.

Dependent Claims 46-48

[0070] These claims ultimately depend upon independent claim 45. As discussed above, claim 45 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 54

[0071] On page 21 of the Action the Examiner refers to his rejection of claims 1-12, 18-28, and 34 as the basis for rejection this claim. As shown above, claims 1-12, 18-28, and 34 are allowable. Therefore this claim is also allowable for at least the same reasons given for claims 1-12, 18-28, and 34.

## **Conclusion**

[0072] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call or email me at your convenience.

Respectfully Submitted,

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Representatives for Applicant

/Kayla D. Brant #46,576/

Dated: Nov. 5, 2008

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